

ORIGINAL

FORM TO BE USED BY A PERSON FILING A MOTION TO VACATE,  
SET ASIDE, OR CORRECT A SENTENCE UNDER 28 U.S.C. §2255

IN THE UNITED STATES DISTRICT COURT

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JAN 19 2007  
at 1 o'clock and 3 min. 5 M  
SUE BEITIA, CLERK

JORGE GUILLEN-SALAZAR

v.

FRANCISCO QUINTANA, WARDEN

F.C.I. BEAUMONT LOW

Criminal Case No: 1:00CR00187-001

Civil Action No:

CV07 00035

HG  
LEK

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**

1. Name and location of the court which entered the judgment/conviction being challenged.

U.S. DISTRICT COURT - DISTRICT OF HAWAII HONOLULU, HAWAII

2. Date of judgment or sentencing.

April 12, 2002

3. Length of sentence.

240 months imprisonment to follow with 5 years of supervised release

4. Nature of offense (all counts).

Continuing Criminal Enterprise 21 USC 848(A); Criminal Forefeiture  
21 USC 853; Money Laundering-Controlled Substance-Sell/Distribute/  
Dispense 18 USC 1956(A)(1); Unlawful User of Drugs to Possess in and

5. What was your plea? (check one) Affect Commerce, A Firearm 18 USC 922 (G)(3)

- (a) Not Guilty  
(b) Guilty  
(c) Nolo Contendre

☐  
☒  
☐

If you entered different pleas to different counts or charges, explain.

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6. Kind of trial. (check one)

- (a) Jury ☐  
(b) Judge only ☒

7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

If you answered yes, provide the following information:

A. What grounds did you raise?

N/A

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B. What was the result?

N/A

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c. What was the date of the decision by the Court of Appeals?

N/A

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9. Did you file a petition for writ of certiorari to the United States Supreme Court?

Yes ☐ No ☒

If you answered yes, what was the result?

N/A

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If you answered yes, what was the date of the decision by the Supreme Court?

N/A

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10. Other than a direct appeal, have you filed any petitions, applications, or motions challenging this judgment in any federal court?

Yes ☐ No ☒

11. If you answered yes, provide the following information for **each** petition, application, or motion:

A. Name and location of the court where you filed.

N/A

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B. Describe what you filed and the date on which it was filed.

N/A

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C. What grounds did you raise?

N/A

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D. What was the result?

N/A

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E. What was the date of the decision?

N/A

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F. Did you appeal the decision?

Yes ☐

No ☒

G. What was the result?

The time allowed for me to file my appeal expired and could not file an appeal.

H. If you did not appeal any adverse decision, explain why you did not appeal.

The time for me to file my appeal expired and my attorney never advised me as to my rights to appeal my conviction.

12. Do you CURRENTLY HAVE PENDING in any court any motion, petition, or appeal concerning the judgment being challenged in this petition?

Yes ☐

No ☒

If you answered yes, describe what you filed, when, where, and its current status.

N/A

13. In most cases federal law requires that a motion to vacate or set aside the judgment be filed within one (1) year of the date your conviction became final. 28 U.S.C. §2255. If this motion is being filed more than one year after your conviction became final, explain why it is late and/or why you believe the one year limitations period does not apply.

The one year period does not apply to my case because I am arguing under new evidence and ineffective assistance of counsel. Based on current federal law, the one year statute does not apply when there are several elements i.e. new evidence, a law that has been enacted that could have affected the outcome of this case or any other rulings made in other cases that could also benefit your case.

14. State BRIEFLY every ground on which you claim you are being held unlawfully. BRIEFLY summarize the facts supporting each ground. If necessary, you may attach additional pages.

A. Ground one: Ineffective assistnace of Counsel

Supporting Facts: Conflict of Interest- Attorney represented other defendant's from the same case knowing that he was also going to represent Defendant/Petitioner on the same case and that their testimony would also be used to convict, enhance, and be used against the defendant in order to name him as the leader of the CCE and therefore the attorney could not have successfully defend the defendant with an open mind.

B. Ground Two: The court erred and violated the rights of the Defendant to a fair trial when it failed to provide an interpreter.

Supporting Facts: The defendant notified the court that he had a problem comprehending the english language when the court asked the defendant in open court if there was any question with respect to his english. The Defendant responded yes but the court failed to recognize that he did in fact had a problem understanding the english language and would need an interpreter. This is in clear violation of rights to a fair trial.

C. Ground Three: The court erred when it determined that drugs that were found were for personal use and was used in calculating the Supporting Facts: whole amount together with the drugs sold.

\*\* The court determined that the amount of drugs that where found for personal use were consolidated into the amount of drugs that were alleged were for sale and distribution. The exact amount was never established by the court nor the prosecution and only simply relied on the testimony of the other defendants in the case.

D. Ground Four: The court erred when it determined that the defend-  
dant was leader of the CCE when in fact it was known that the  
Supporting Facts: defendant was providing the drugs to other users  
that were not employed by the defendant.

15. If any of the issues that you are raising in this motion have not been previousy presented, explain which

issues are being raised for the first time and why.

Issues One thru Four are being addressed for the the first time because the petitioner has attempted to obtain a complete copy of the trial transcripts from his attorney and have been unable to. This is also newly discovered evidence that the defendant has determined on his own.

16. Do you have any other sentence(s) to be served after you complete the sentence(s)/commitment that is being challenged in this petition?

Yes [ ] No ☒

If you answered yes, provide the following information about each of your future sentences:

A. Name and location of the court that imposed the sentence.

None

B. Length of the sentence.

C. Have you filed, or do you intend to file, a petition or motion attacking this sentence?

Yes [ ] No ☒

WHEREFORE, Movant prays that the Court grant him al relief to which he may be entitled in this action.

**I DECLARE UNDER THE PENALTIES OF PERJURY THAT THE INFORMATION ABOVE IS TRUE AND CORRECT.**

SIGNED THIS 12 day of January, 2007.

Jorge G Salazar.

Jorge Guillen Salazar#87626-022

F.C.I. Beaumont Low-Unit ~~BB~~

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